

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FAULK COMPANY, INC.,

Plaintiff,

v.

XAVIER BECERRA, ET AL.,

Defendants.

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CIVIL ACTION NO. 4:24-CV-00609-P

**APPENDIX IN SUPPORT OF PLAINTIFF FAULK COMPANY, INC.'S
MOTION FOR AWARD OF ATTORNEYS' FEES AND BRIEF IN SUPPORT**

NOW COMES, Plaintiff Faulk Company, Inc. and files this Appendix in Support of Its Motion for Summary Judgment.

EX. NO.	DESCRIPTION	APP. PAGES
A	Declaration of David L. LeFevre	1-7
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Respectfully submitted,

/s/ David L. LeFèvre

David LeFevre

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**ATTORNEYS FOR PLAINTIFF
FAULK COMPANY, INC.**

CERTIFICATE OF SERVICE

On May 7, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Taylor J. Winn
Taylor J. Winn

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FAULK COMPANY, INC.,

Plaintiff,

v.

XAVIER BECERRA, ET AL.,

Defendants.

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CIVIL ACTION NO. 4:24-CV-00609-P

DECLARATION OF DAVID L. LeFÈVRE

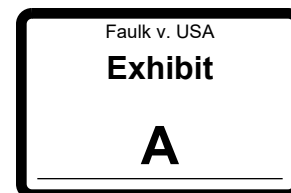
1. “My name is David L. LeFèvre, and my business address is 4201 Main Street, Suite 200-153, Houston, Texas 77002. I am over twenty-one (21) years of age and am fully competent to testify to the truth of the facts stated herein. Because I represent Plaintiff Faulk Company, Inc. (“Plaintiff” or “Faulk Company”) in the above-referenced matter, I have personal knowledge of the following matters, and they are all true and correct.

2. I am an attorney licensed to practice law in the state of Texas, and I am the principal of the firm LeFèvre Law PC, which has its principal place of business at 4201 Main Street, Suite 200-153, Houston, Texas 77002, and which was retained by Faulk Company to provide legal representation in its claims against Defendant United States of America and certain agencies and officers of those agencies (collectively, “Defendants” or “the Government”).

3. As a result of the services my firm performed in bringing this action before the Court to seek a refund and certain declaratory relief as alleged in Plaintiff’s Original Complaint, Faulk Company has or will incur 149.1 hours of billed time, totaling \$50,731.50 in reasonable and necessary attorneys’ fees. The aforementioned hours were expended as a result bringing this action against Defendants.

4. The aforementioned hours were expended by the following attorneys at their specified billing rates, as follows:

DECLARATION OF DAVID L. LeFÈVRE



Page 1

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David LeFèvre (Principal)	63.5 hours	\$26,987.50
Christine Vanderwater (Associate)	65.9 hours	\$19,770.00
Abigail Tinsley-Worman (contract associate attorney)	2.1 hours	\$630.00
Patricia Sifka (contract legal research and writing attorney)	7.1 hours	\$1,349.00
Cassidy Crockett-Verba (contract legal research and writing attorney)	10.5 hours	\$1,995.00
TOTAL:	149.1 hours	\$50,731.50

5. I managed the work performed by all contributing attorneys and staff mentioned herein. The primary issue in this case was a legal one. The attorney work was primarily devoted to analysis of the legislative and regulatory history of Section 1411 and judicial precedents. By my estimation, 80% of my and Ms. Vanderwater's time was spent on Count III, and 20% was spent on Count I.

6. Applying the hourly rate caps under Code Section 7430 to 20% of the total hours spent by each contributing attorney who worked on the refund claim issues, I calculate the compensable amount of fees under Code Section 7430 as follows:

Contributing Attorney	2024 hours	2024 rate	2025 hours	2025 rate	Subtotal
David LeFèvre (Principal)	7.2 hours	\$240.00	5.5 hours	\$250.00	\$3,103.00
Christine Vanderwater (Associate)	10.7 hours	\$240.00	2.5 hours	\$250.00	\$3,193.00
Abigail Tinsley-Worman (contract associate attorney)	0 hours	\$240.00	0 hours	\$250.00	\$0.00
Patricia Sifka (contract legal research and writing attorney)	0 hours	\$240.00	0 hours	\$250.00	\$0.00
Cassidy Crockett-Verba (contract legal research and writing attorney)	0 hours	\$240.00	0 hours	\$250.00	\$0.00
TOTAL:					\$6,296.00

7. Applying the hourly rate caps under the EAJA to 80% of the total hours spent by each contributing attorney who worked on the Section 1411 procedural due process issues, I calculate the compensable amount of fees under the EAJA as follows:

Contributing Attorney	2024 hours	2024 rate	2025 hours	2025 rate	Subtotal
David LeFèvre (Principal)	28.7 hours	\$240.71	22.1 hours	\$244.50	\$12,311.83
Christine Vanderwater (Associate)	42.9 hours	\$240.71	2.5 hours	\$244.50	\$12,722.56
Abigail Tinsley-Worman (contract associate attorney)	0 hours	\$240.71	2.1 hours	\$244.50	\$513.45
Patricia Sifka (contract legal research and writing attorney)	7.1 hours	\$190.00	0 hours	\$244.50	\$1,349.00
Cassidy Crockett-Verba (contract legal research and writing attorney)	10.5 hours	\$190.00	0 hours	\$244.50	\$1,995.00
TOTAL:					\$28,891.84

8. I am one of the attorneys responsible for the prosecution of Plaintiff's claims, and I have been practicing in employee benefits law for over 17 years. I have been licensed to practice law in Texas since 2010 and in the state of Missouri since 2007. I obtained my law degree from the University of Missouri School of Law in 2007. Upon graduating from law school, I worked as an associate attorney for Brown & Dunn in Kansas City, Missouri, where I began to specialize in ERISA-covered health and welfare plans and qualified retirement plans. In 2010 I started the Houston office of Kansas City-based firm Dunn & Davison, continuing to specialize in health and welfare plans and qualified retirement plans, later starting my own firm. From April of 2012 to March of 2018, I also served as part-time in-house counsel to the insurance agency Wortham Insurance and Risk Management, providing analytical and strategic support to national and key accounts on complex employee welfare benefits compliance matters—in particular, Affordable Care Act (“ACA”) compliance.

9. I charged Faulk Company an hourly fee for my services on this case. My fees are calculated by multiplying my hourly rate by the number of hours expended. My hourly rate for work performed through February 2025 is \$425, and my rate thereafter is \$495. These rates are at or below what is customarily charged in the Houston area for the same or similar services for an attorney with my experience, reputation, and ability, considering the type of controversy, time limitations imposed, the results obtained, and the nature of my relationship with Faulk Company. However, I am familiar with the reasonable hourly rates charged by attorneys with similar experience for similar services, and the rate I previously charged in this matter is a reasonable rate for my services in Texas for services billed hourly. The 63.5 hours I spent on this matter are for analysis of caselaw and evidence; research; preparation of Plaintiff's Original Complaint, its response to Defendant's Motion to Dismiss and Brief in Support, and Plaintiff's Motion for Summary Judgment and Appendix in Support; development of litigation strategy; and appearance at required conferences.

10. Christine Vanderwater is an associate attorney of the firm, and she is in her second year after graduating from Texas Tech University School of Law in May 2023. She previously worked as a summer clerk for the firm in 2021, and before that she was a paralegal with the firm from November 2019 to August 2020. Ms. Vanderwater has intimate knowledge both of health and welfare laws like the ACA and benefits-related tax provisions from her time as a paralegal, when she also supported the firm on the IRS administrative processes for challenging Employer Shared Responsibility Payment excise taxes. Ms. Vanderwater's legal research and writing skills, developed in her time as Executive Publication Editor for the Estate Planning and Community Property Law Journal, have also been extremely helpful in the prosecution of this case. The 65.9 hours she spent on this matter are for legal analysis, research, preparation of Plaintiff's Original

Complaint, its response to Defendant's Motion to Dismiss and Brief in Support, and Plaintiff's Motion for Summary Judgment and Appendix in Support. Her rate is \$300 per hour for work performed through February 2025 and \$325 thereafter.

11. Abigail Tinsley-Worman is an associate attorney supporting the firm on a contract basis. She is a first-year associate who provided limited, but necessary, assistance with the preparation of the Appendix in Support of Plaintiff's Motion for Summary Judgment—in particular, analysis of the law of judicial notice and identification of government records and reports of which the Court may need to take judicial notice. She is a graduate of Texas Tech University School of Law, where she was an articles editor for the Estate Planning and Community Property Law Journal. The 2.1 hours she spent on this matter are for Plaintiff's Motion for Summary Judgment and Appendix in Support, focusing on Count III. Her rate is \$300 per hour.

12. In order to make the most efficient use of Faulk Company's resources, the firm also retained the legal research services firm National Legal Research Group ("NLRG") to conduct in-depth research into the legislative history of ACA Section 1411 and the nondelegation doctrine. The NLRG attorneys who worked on this matter are Patricia Sifka and Cassidy M. Crockett-Verba. Their rates are \$190 per hour.

13. Ms. Crockett-Verba obtained her law degree from the University of Richmond School of Law in 2021 and began her career working on cannabis policy and legislation for the National Organization for the Reform of Marijuana Laws. She has co-authored two law review articles on Virginia's changing cannabis policies. The 10.5 hours she spent on this matter are for legal research, analysis and writing for portions of Plaintiff's Response to Defendant's Motion to Dismiss—in particular, the arguments concerning the nondelegation doctrine and agency authority applicable to Count III.

14. Ms. Patricia Sifka obtained her law degree from California Western School of Law in 1988. After practicing in San Diego in criminal defense and general civil litigation, Ms. Sifka joined the Air Force as an Assistant Staff Judge Advocate (JAG). While in the military, Ms. Sifka worked in various areas: federal labor law, claims, FOIA requests, government contracts, legal national security issues, immigration matters, base operations questions, general federal civil litigation and family law matters for military members and their families. The 10.5 hours she spent on this matter are for legal research, analysis and writing for portions of Plaintiff's Response to Defendant's Motion to Dismiss—in particular, the arguments concerning the nondelegation doctrine and agency authority applicable to Count III.

15. The firm charged Faulk Company an hourly fee for Ms. Vanderwater's, Ms. Tinsley-Worman's, Ms. Sifka's and Ms. Crockett-Verba's services on this case. The fees are calculated by multiplying their hourly rate by the number of hours expended on the litigation. The rates charged for each of these contributing attorneys is at or below that customarily charged in this area for the same or similar services for attorneys with their experience, reputation, and ability, considering the type of controversy, time limitations imposed, the results obtained, and the nature of his relationship with Faulk Company. I am familiar with the reasonable hourly rates charged by associate attorneys with similar experience for similar services, and the rates charged are reasonable rates for services in Texas. The services by these contributing attorneys for which we seek recovery represent substantive legal work performed under my direction and supervision.

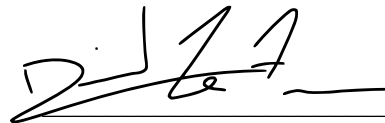
16. I am the principal attorney of LeFèvre Law PC and am familiar with the manner in which its records are created and maintained by the virtue of my duties and responsibilities. Attached as Exhibit A-1 is a report generated from my firm's billing records system of all billing records associated with the prosecution of Faulk Company's case from the preparation of the

complaint to the present. The report includes all fees actually charged to Faulk Company for this matter, and any amounts charged off are shown on the report with a corresponding negative amount of time and dollars. This report is an original record or exact duplicates of the original record. The billing records shown in the report were made at or near the time of each act or event set forth. The billing records were made by, or from information transmitted by, persons with personal knowledge of the matters set forth. The records were kept in the course of regularly conducted business activity. It is the regular practice of the firm to make the records and the report in which they are provided. I am a custodian of records for the documents attached as Exhibit A-1.

17. The fees incurred as a result of this lawsuit and which are sought in connection with it are reasonable and necessary for the services rendered in suing Defendants. The work performed and attributed to the contributing attorneys listed herein were reasonable and necessary for the successful prosecution of Faulk Company's claims against Defendants. Further, the hourly rates for each person providing legal services in Exhibit A-1 were both reasonable and necessary for the services provided.

18. After considering the aforementioned factors and applying the rate caps provided under Section 7430 of the Code and the EAJA, I believe and aver that the amount of \$35,187.84 in attorneys' fees incurred to prosecute the claims against the Government in this matter are reasonable and necessary.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct."

A handwritten signature in black ink, appearing to read 'D. LeFèvre', is written over a horizontal line.

David LeFèvre



LeFevre Law PC

The Firm Behind
ERISAFire

Billing Detail Report

projects.erisafire.com

CLIENT:

Faulk Company, Inc.

REPORT PERIOD

1/1/24 through 5/5/25

FEES BY MATTER:

2019 ESRP ACA Penalties \$50,731.50

SUBTOTAL

\$50,731.50

TOTAL

\$50,731.50

DATE	PROFESSIONAL	MATTER	NARRATIVE	HOURS	RATE	FEE
1/23/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Review refund request, litigation [REDACTED] and arguments. Analyze filing requirements for complaint under federal and local rules.	0.9	\$300.00	\$270.00
1/29/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analyze jurisdictional issues surrounding complaint. Begin drafting complaint.	1.1	\$300.00	\$330.00
1/31/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Review IRS materials on tax refund litigation. Continued drafting of complaint.	1.6	\$300.00	\$480.00
1/31/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continue drafting complaint.	1.5	\$300.00	\$450.00
2/1/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis of jurisdictional issues and statutory cause of action.	1	\$300.00	\$300.00
2/6/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continue drafting complaint.	2.9	\$300.00	\$870.00
2/6/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued drafting of complaint and review/analysis of prior case law precedent [REDACTED]	1.5	\$300.00	\$450.00

Faulk v. USA

Exhibit

A-1

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2/6/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis and drafting of complaint; evaluation of [REDACTED] arguments.	0.6	\$300.00	\$180.00
2/7/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis of Administrative Procedure Act judicial review provisions and traditional post-payment refund procedures.	0.8	\$300.00	\$240.00
2/8/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Review IRS's motion to dismiss in similar § 4980H case [REDACTED] analysis of available causes of action under refund suit.	0.6	\$300.00	\$180.00
2/20/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Further analysis and revision of counts in complaint [REDACTED]	1.3	\$300.00	\$390.00
2/21/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis of jurisdiction issues [REDACTED] defenses available to government. Continued drafting of complaint.	2.3	\$300.00	\$690.00
5/27/2024	David LeFevre	2019 ESRP ACA Penalties	Continue to prepare complaint for federal district court refund lawsuit. Analysis of US Code and federal judicial precedent as needed.	6.8	\$425.00	\$2,890.00
6/4/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Meet with Mr. Winn and Mr. LeFevre to discuss litigation [REDACTED] going forward; [REDACTED]	0.5	\$300.00	\$150.00
6/11/2024	David LeFevre	2019 ESRP ACA Penalties	NO CHARGE FOR: Continue to prepare complaint for federal district court refund lawsuit, [REDACTED] Analysis of US Code and federal judicial precedent as needed.	-4.7	\$425.00	-\$1,997.50
6/11/2024	David LeFevre	2019 ESRP ACA Penalties	Continue to prepare complaint for federal district court refund lawsuit, [REDACTED] Analysis of US Code and federal judicial precedent as needed.	4.7	\$425.00	\$1,997.50
7/1/2024	David LeFevre	2019 ESRP ACA Penalties	NO CHARGE FOR: Prepare and file motion for admission pro hac vice.	-1.6	\$425.00	-\$680.00
7/1/2024	David LeFevre	2019 ESRP ACA Penalties	Prepare and file motion for admission pro hac vice.	1.6	\$425.00	\$680.00
7/15/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Draft and file motion for admission pro hac vice.	0.5	\$300.00	\$150.00
11/1/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis of government's filed 12b(6) motion.	0.5	\$300.00	\$150.00
11/5/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis of government's arguments in motion to dismiss. Begin drafting response brief.	0.9	\$300.00	\$270.00
11/5/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Consideration of scheduling, discovery, and briefing moving forward.	0.3	\$300.00	\$90.00
11/5/2024	David LeFevre	2019 ESRP ACA Penalties	Meet with co-counsel regarding upcoming discovery conference and litigation [REDACTED]	0.3	\$425.00	\$127.50
11/6/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued analysis of motion to dismiss and drafting of response brief, [REDACTED]	2.2	\$300.00	\$660.00
11/13/2024	David LeFevre	2019 ESRP ACA Penalties	Prepare for and travel to/from meeting with US Attorney. [REDACTED] meeting with Mr. Oswalt and Mr. Faulk.	6.4	\$425.00	\$2,720.00
11/13/2024	David LeFevre	2019 ESRP ACA Penalties	NO CHARGE FOR: Prepare for and travel to/from meeting with US Attorney. [REDACTED] meeting with Mr. Oswalt and Mr. Faulk.	-6.4	\$425.00	-\$2,720.00
11/13/2024	David LeFevre	2019 ESRP ACA Penalties	Required in-person litigation scheduling meeting with US Attorney. [REDACTED] meeting with Mr. Winn.	1.1	\$425.00	\$467.50

11/14/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued analysis of government's arguments; analysis of legislative history and congressional reports [REDACTED]; analysis of regulations and statutes at issue.	2	\$300.00	\$600.00
11/15/2024	David LeFevre	2019 ESRP ACA Penalties	Analysis of Congressional record research prepared by research associate.	1.7	\$425.00	\$722.50
11/15/2024	David LeFevre	2019 ESRP ACA Penalties	NO CHARGE FOR: Analysis of Congressional record research prepared by research associate.	-1.7	\$425.00	-\$722.50
11/15/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued analysis and drafting of response to motion to dismiss.	1.5	\$300.00	\$450.00
11/15/2024	Patricia Sifka (NLRG)	2019 ESRP ACA Penalties	Analysis of legislative history [REDACTED]. Analysis of post-enactment history [REDACTED]. [REDACTED] Prepare memo for incorporation into brief in response to motion for summary judgment.	7.1	\$190.00	\$1,349.00
11/18/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Analysis of ACA post-enactment legislative and executive history; relevant case law; and similar prior pleadings [REDACTED]	1.9	\$300.00	\$570.00
11/19/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued preparation of response to motion to dismiss.	2.5	\$300.00	\$750.00
11/26/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued drafting of response to motion to dismiss.	6.1	\$300.00	\$1,830.00
11/27/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued drafting of response to motion to dismiss.	4.5	\$300.00	\$1,350.00
11/28/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued drafting of response to motion to dismiss.	3	\$300.00	\$900.00
11/29/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued drafting of response to motion to dismiss.	2	\$300.00	\$600.00
12/1/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continued drafting of response to motion to dismiss.	2	\$300.00	\$600.00
12/2/2024	David LeFevre	2019 ESRP ACA Penalties	Analysis of [REDACTED] legal issues [REDACTED]. Prepare argument outline. Begin preparing related sections of brief.	4.6	\$425.00	\$1,955.00
12/3/2024	David LeFevre	2019 ESRP ACA Penalties	Continue analysis of [REDACTED] [REDACTED]. Continue. preparing related sections of brief.	6.2	\$425.00	\$2,635.00
12/4/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Continue preparation of response to motion to dismiss.	7	\$300.00	\$2,100.00
12/4/2024	David LeFevre	2019 ESRP ACA Penalties	Continue to prepare sections of brief in response to the United State's motion to dismiss, building on the efforts of Ms. Vanderwater and Ms. Crockett.	6.1	\$425.00	\$2,592.50
12/4/2024	Cassidy Crockett-Verba (NLRG)	2019 ESRP ACA Penalties	Analysis of [REDACTED] issues presented by Fulk matter. Prepare memo for incorporation into brief in response to government's motion to dismiss.	10.5	\$190.00	\$1,995.00
12/6/2024	David LeFevre	2019 ESRP ACA Penalties	Continue to prepare brief in response to the United State's motion to dismiss, building on the efforts of Ms. Vanderwater and Ms. Crockett. Prepare appendix.	10.8	\$425.00	\$4,590.00
12/9/2024	Christine Vanderwater	2019 ESRP ACA Penalties	Finalize initial disclosures list pursuant to Fed. R. Civ. Pro. 26(f) and correspondence with Mr. Winn regarding the same.	0.1	\$300.00	\$30.00
2/4/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Review of Judge Pittman's order and email to Mr. Winn regarding next steps.	0.2	\$300.00	\$60.00

2/5/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Meeting with Mr. Winn and Mr. LeFevre [REDACTED]	0.9	\$300.00	\$270.00
2/6/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Meet with Mr. LeFevre and Mr. Oswalt [REDACTED]	0.6	\$300.00	\$180.00
2/7/2025	David LeFevre	2019 ESRP ACA Penalties	Meet with Mr. Winn, Ms. Vanderwater, and opposing counsel regarding judge's order to confer. Further debrief and discussion [REDACTED] with Mr. Winn and Ms. Vanderwater [REDACTED].	1.8	\$425.00	\$765.00
2/7/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Meet with Mr. Winn, Mr. LeFevre, and opposing counsel regarding judge's order to confer. Further debrief and discussion [REDACTED] with Mr. Winn and Mr. LeFevre.	1.8	\$300.00	\$540.00
2/11/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Legal review and drafting of scheduling order proposed by opposing counsel. Email response to and [REDACTED] call with Mr. Winn and Mr. LeFevre.	1.2	\$300.00	\$360.00
2/12/2025	Abigail Tinsley-Worman	2019 ESRP ACA Penalties	Initial legal analysis and summary of documents for judicial notice.	0.9	\$300.00	\$270.00
2/20/2025	Abigail Tinsley-Worman	2019 ESRP ACA Penalties	Continued legal analysis and summary of documents for judicial notice.	1.2	\$300.00	\$360.00
2/27/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Review of motions and briefing for judicial notice. Continued analysis of briefing [REDACTED].	0.8	\$300.00	\$240.00
3/4/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Continued review of motions and briefing for judicial notice; began compiling items for judicial notice.	1.2	\$300.00	\$360.00
3/5/2025	David LeFevre	2019 ESRP ACA Penalties	Prepare motion for summary judgment. Continue to assess and refine litigation briefing [REDACTED] Analysis of [REDACTED] issues.	4.6	\$425.00	\$1,955.00
3/5/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Finish compiling items for judicial notice exhibits.	1	\$300.00	\$300.00
3/6/2025	David LeFevre	2019 ESRP ACA Penalties	Continue to prepare motion for summary judgment and brief in support, analyzing legal arguments of the government in its last reply brief. [REDACTED]	6.8	\$425.00	\$2,890.00
3/6/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Drafted affidavit.	1.9	\$300.00	\$570.00
3/7/2025	David LeFevre	2019 ESRP ACA Penalties	Further revisions to motion for summary judgment [REDACTED]	2.1	\$425.00	\$892.50
3/7/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Final legal review of and edits to motion for summary judgment, brief in support and declaration prior to filing.	2	\$300.00	\$600.00
3/13/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Legal review of drafted joint motion and proposed order regarding court-mandated mediation.	0.2	\$300.00	\$60.00
3/21/2025	Christine Vanderwater	2019 ESRP ACA Penalties	Legal analysis of government's response to motion to dismiss.	0.5	\$300.00	\$150.00
5/2/2025	David LeFevre	2019 ESRP ACA Penalties	Analysis of EAJA and Code Section 7430 requirements for prevailing party and hourly rate caps. Prepare motion for attorney's fees. Analysis of "substantially justified" standard [REDACTED] Prepare outline for "substantially justified" argument.	7.7	\$425.00	\$3,272.50
5/5/2025	David LeFevre	2019 ESRP ACA Penalties	Prepare database of time entries for motion for attorney's fees. Prepare report to accompany motion. Prepare declaration to support motion.	4.6	\$425.00	\$1,955.00

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FAULK COMPANY, INC.,

Plaintiff,

v.

XAVIER BECERRA, ET AL.,

Defendants.

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CIVIL ACTION NO. 4:24-CV-00609-P

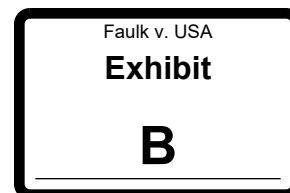
DECLARATION OF TAYLOR J. WINN

1. “My name is Taylor J. Winn and my business address is 201 Main Street, Suite 2500, Fort Worth, Texas 76102. I am over twenty-one (21) years of age and am fully competent to testify to the truth of the facts stated herein. Because I represent Plaintiff Faulk Company, Inc. (“Plaintiff” or “Faulk”) in the above-referenced matter, I have personal knowledge of the following matters and they are all true and correct.

2. I am an attorney licensed to practice law in the state of Texas, and am an associate with the firm of KELLY HART & HALLMAN LLP, which has its principal place of business at 201 Main Street, Suite 2500, Fort Worth, Texas 76102 which was retained by Faulk to provide legal representation in its claims against Defendant United States of America (“Defendant” or “the Government”).

3. As a result of the services my firm performed in bringing this action before the Court to seek damages caused by Defendant as alleged in Plaintiff’s Original Complaint, Faulk has or will incur 48.5 hours of billed time, totaling \$17,305.50 in reasonable and necessary attorneys’ fees. The aforementioned hours were expended as a result bringing this action against Defendant.

DECLARATION OF TAYLOR J. WINN



Page 1

APP.12

4. The aforementioned hours were expended by the following attorneys and paralegal at their specified billing rates, as follows:

Taylor J. Winn (Associate)	<u>2024 hours</u>	<u>2024 Rate</u>	<u>2025 Hours</u>	<u>2025 Rate</u>	<u>Subtotal</u>
	25.5	\$375	10.2	\$425	\$13,897.50
Jeremy D. Markham (Paralegal)	<u>2024 hours</u>	<u>2024 Rate</u>	<u>2025 Hours</u>	<u>2025 Rate</u>	<u>Subtotal</u>
	9.6	\$260	3.2	\$285	\$3,408.00
TOTAL:				48.5 hours	\$17,305.50

5. I managed the work performed by all contributing attorneys and staff mentioned herein. The primary issue in this case was a legal one. The attorney work was primarily devoted to analysis of the legislative and regulatory history of Section 1411 and judicial precedent. By my estimation, 80% of my and Mr. Markham's time was spent on Count III, and 20% was spent on Count I.

6. Applying the hourly rate caps under Code Section 7430 to 20% of the total hours spent by each contributing attorney who worked on the refund claim issues, I calculate the compensable amount of fees under Code Section 7430 as follows:

Taylor J. Winn (Associate)	<u>2024 hours</u>	<u>2024 Rate</u>	<u>2025 Hours</u>	<u>2025 Rate</u>	<u>Subtotal</u>
	5.1	\$240	2.0	\$250	\$1,724.00
Jeremy D. Markham (Paralegal)	<u>2024 hours</u>	<u>2024 Rate</u>	<u>2025 Hours</u>	<u>2025 Rate</u>	<u>Subtotal</u>
	1.9	\$240	0.6	\$250	\$606.00
TOTAL:					\$2,330.00

7. Applying the hourly rate caps under the EAJA to 80% of the total hours spent by each contributing attorney who worked on the Section 1411 procedural due process issues, I calculate the compensable amount of fees under the EAJA as follows:

Taylor J. Winn (Associate)	<u>2024 hours</u>	<u>2024 Rate</u>	<u>2025 Hours</u>	<u>2025 Rate</u>	<u>Subtotal</u>
	20.4	\$240.71	8.2	\$244.50	\$6,915.38
Jeremy D. Markham (Paralegal)	<u>2024 hours</u>	<u>2024 Rate</u>	<u>2025 Hours</u>	<u>2025 Rate</u>	<u>Subtotal</u>
	7.7	\$240.71	2.6	\$244.50	\$2,489.17
TOTAL:					\$9,404.55

8. I am one of the attorneys responsible for the prosecution of Plaintiff's claims. I have been licensed to practice law in Texas since 2019. I attended Texas A&M School of Law where I graduated in 2019. Upon graduating from law school, I served as a law clerk to the Honorable Judge Mark Pittman in the U.S. District Court for the Northern District of Texas, Fort Worth Division from 2019 to 2020. I also served as an Assistant U.S. Attorney at the U.S. Attorney's Office, Northern District of Texas from 2020–2022. Since leaving the U.S. Attorney's Office in 2022, I have represented clients in general civil litigation and labor and employment matters. In January 2022, I joined KELLY HART & HALLMAN as an associate in the Labor and Employment Section, where I have practiced for over 3 years. I served as the Vice Chair of the Labor and Employment Section for the Tarrant County Bar Association in 2022 and Chair of the Labor and Employment Section in 2023. Additionally, I am admitted to practice in the federal district courts in the Northern, Southern, and Western Districts of Texas.

9. I charged Faulk an hourly fee for my services on this case. My rate is calculated by multiplying my hourly rate by the number of hours expended on the litigation. My hourly rate for work performed through February 2025 is \$375, and my rate thereafter is \$425. These rates are at

or below what is customarily charged in this area for the same or similar services for an attorney with my experience, reputation, and ability, considering the type of controversy, time limitations imposed, the results obtained, and the nature of my relationship with Faulk Company. However, I am familiar with the reasonable hourly rates charged by attorneys with similar experience for similar services, and the rate I previously charged in this matter is a reasonable rate for my services in North Texas for both services billed hourly and for services performed under a contingency agreement. The 35.70 hours I spent on this matter are for analysis of evidence, research, preparation of Plaintiff's Original Complaint, its response to Defendant's Motion to Dismiss and Brief in Support, and Plaintiff's Motion for Summary Judgment and Appendix in Support; development of litigation strategy; and appearance at required conferences.

10. Jeremy D. Markham is a paralegal with over 16 years of experience in multiple areas of civil, probate, appellate, and family law. Mr. Markham earned a Bachelor's Degree in Criminal Justice from Sam Houston State University, as well as two Master's Degrees in Theology from Southwestern Baptist Theological Seminary. Mr. Markham began his legal career at the Law Office of Vickie M. Alexander in Dallas, Texas in 2009. Prior to joining KELLY, HART & HALLMAN in 2023, he worked as senior paralegal for the Law Office of J. Shelby Sharpe. His expertise involves conducting factual and legal research, preparing documents for legal transactions, drafting of pleadings and discovery, interviewing clients and witnesses, and assisting at hearings and trials.

11. The firm charged Faulk an hourly fee for Mr. Markham's services on this case. His rate is calculated by multiplying her hourly rate by the number of hours expended on the litigation. His hourly rate for work performed through February 2025 is \$260, and his rate thereafter is \$285. These rates are customarily charged in this area for the same or similar services for a paralegal

with his experience, reputation, and ability, considering the type of controversy, time limitations imposed, the results obtained, and the nature of his relationship with Faulk. I am familiar with the reasonable hourly rates charged by legal assistants with similar experience for similar services, and the rate charged by Mr. Markham in this matter is a reasonable rate for his services in North Texas. The services by Mr. Markham for which we seek recovery represent substantive legal work performed under my direction and supervision.

12. I am an associate at KELLY, HART & HALLMAN LLP and am familiar with the manner in which its records are created and maintained by the virtue of my duties and responsibilities. Attached as Exhibit B-1 are the billing records associated with the prosecution of Faulk's case. These business records are the original records or exact duplicates of the original records. The records were made at or near the time of each act or event set forth. The records were made by, or from information transmitted by, persons with personal knowledge of the matters set forth. The records were kept in the course of regularly conducted business activity. It is the regular practice of the firm to make the records. I am a custodian of records for the documents attached as Exhibit B-1.


13. Faulk seeks the attorney's fees and costs it has incurred since the outset of this litigation. A record of costs incurred and time billed prosecuting this case is attached as Exhibit B-1.

14. The fees incurred as a result of the this lawsuit and which are sought in connection with it are reasonable and necessary for the services rendered in suing Defendant. The work performed and attributed to Mr. Markham and myself in Exhibit B-1 were reasonable and necessary for the successful prosecution of Faulk's claims against the Government. Further, the hourly rates for each person providing legal services in Exhibit B-1 were both reasonable and

necessary for the services provided.

15. After considering the aforementioned factors, I believe and aver that the amount of \$11,734.55 in attorneys' fees incurred to prosecute the claims against the Government in this matter are reasonable and necessary.

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct."



Taylor J. Winn

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

July 17, 2024
 Invoice #680057

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through June 30, 2024

06/04/24	T. Winn	Telephone conference regarding [REDACTED]	.50	\$187.50
06/10/24	T. Winn	Preparing complaint for filing in federal court.	2.10	\$787.50
06/12/24	T. Winn	Continuing preparation of complaint for filing in federal court.	2.40	\$900.00
06/14/24	T. Winn	Analyzing [REDACTED] [REDACTED]	2.60	\$975.00
06/19/24	T. Winn	Continuing research [REDACTED] [REDACTED]	2.10	\$787.50
06/28/24	T. Winn	Preparing and finalizing complaint and required documents to file suit in federal court.	3.60	\$1,350.00
06/28/24	J. Markham	Preparing Complaint for filing.	3.00	\$780.00
06/28/24	J. Markham	Preparing Certificate of Interested Persons.	.50	\$130.00
		Total	16.80	\$5,897.50

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
T Winn	Associate	375.00	13.30	4987.50
J Markham	Legal Assistant	260.00	3.50	910.00
	TOTALS		16.80	5897.50

Disbursements

Faulk v. USA

Exhibit

B-1

APP.18

Kelly Hart & Hallman LLP

Faulk Company, Inc.
Matter # 19161.0100
2019 ACA ESRP Excise Tax Matter

Jul 17, 2024
Invoice #680057
Page 2

Total Disbursements	\$.00
Total This Invoice	\$5,897.50
TOTAL AMOUNT DUE	\$5,897.50

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

August 15, 2024
 Invoice #681752

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through July 31, 2024

07/01/24	J. Markham	Conferencing with Taylor Winn [REDACTED]	.80	\$208.00
07/02/24	T. Winn	Analyzing and determining proper service methods for causes of action against the federal government.	1.30	\$487.50
07/02/24	J. Markham	E-mailing process server on service of defendants.	.30	\$78.00
07/03/24	J. Markham	Conferencing with Taylor Winn [REDACTED]	.70	\$182.00
07/03/24	J. Markham	E-mailing process server with service instructions on remaining Defendants.	.10	\$26.00
07/08/24	J. Markham	E-filing return of service on Defendant USA.	.30	\$78.00
07/18/24	J. Markham	E-mailing process server on service of defendants.	.20	\$52.00
07/26/24	J. Markham	Analyzing executed return of service on Defendants.	.30	\$78.00
		Total	4.00	\$1,189.50

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
T Winn	Associate	375.00	1.30	487.50
J Markham	Legal Assistant	260.00	2.70	702.00
TOTALS			4.00	1189.50

Disbursements

Service-Citation/Subpoena 354.76

Kelly Hart & Hallman LLP

Faulk Company, Inc.
Matter # 19161.0100
2019 ACA ESRP Excise Tax Matter

Aug 15, 2024
Invoice #681752
Page 2

Total Disbursements	\$354.76
Total This Invoice	\$1,544.26
Previous Balance	\$5,897.50
TOTAL AMOUNT DUE	\$7,441.76

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

September 30, 2024
 Invoice #684980

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through August 31, 2024

08/16/24	T. Winn	Conference with opposing counsel regarding extension of answer deadline and review of proposed motion.	1.10	\$412.50
08/23/24	J. Markham	Analyzing Order Granting Unopposed Motion for Defendants to file responsive answer.	.20	\$52.00
	Total		1.30	\$464.50

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEE
T Winn	Associate	375.00	1.10	412.50
J Markham	Legal Assistant	260.00	.20	52.00
	TOTALS		1.30	464.50

Disbursements

Filing Fees 405.00

Total Disbursements \$405.00

Total This Invoice \$869.50

Previous Balance \$354.76

TOTAL AMOUNT DUE \$1,224.26

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

December 23, 2024
 Invoice #691051

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through November 30, 2024

11/01/24	J. Markham	Analyzing response deadline to Plaintiff's Motion to Dismiss.	.10	\$26.00
11/03/24	T. Winn	Analysis of Motion to Dismiss filed by government.	1.30	\$487.50
11/04/24	J. Markham	Analyzing order deadlines.	.20	\$52.00
11/13/24	T. Winn	Prepare for and participate in scheduling conference as instructed by court.	1.20	\$450.00
11/14/24	T. Winn	Continuing preparation of motion to dismiss.	2.30	\$862.50
11/15/24	T. Winn	Continuing preparation of motion to dismiss.	.90	\$337.50
11/19/24	T. Winn	Preparing joint status report on scheduling.	2.40	\$900.00
11/22/24	T. Winn	Continuing preparation of Joint Status Report on scheduling.	.60	\$225.00
11/26/24	T. Winn	Preparing response to Motion to Dismiss.	1.10	\$412.50
	Total		10.10	\$3,753.00

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
T Winn	Associate	375.00	9.80	3675.00
J Markham	Legal Assistant	260.00	.30	78.00
TOTALS			10.10	3753.00

Disbursements

Total Disbursements \$.00

Kelly Hart & Hallman LLP

Faulk Company, Inc.
Matter # 19161.0100
2019 ACA ESRP Excise Tax Matter

Dec 23, 2024
Invoice #691051
Page 2

Total This Invoice	\$3,753.00
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TOTAL AMOUNT DUE	\$3,753.00
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Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

January 28, 2025
 Invoice #693315

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through December 31, 2024

12/04/24	T. Winn	Preparing motion to dismiss.	1.30	\$487.50
12/05/24	T. Winn	Continuing preparation of motion to dismiss.	1.10	\$412.50
12/06/24	T. Winn	Preparing and filing motion to dismiss.	4.20	\$1,575.00
12/06/24	J. Markham	Preparing response to motion to dismiss.	1.80	\$468.00
12/06/24	J. Markham	Preparing appendix in support of response.	1.00	\$260.00
12/09/24	T. Winn	Preparing and serving initial disclosures.	1.30	\$487.50
12/09/24	J. Markham	Analyzing deadline for Plaintiff's response to Defendant's Motion to Dismiss.	.10	\$26.00
		Total	10.80	\$3,716.50

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
T Winn	Associate	375.00	7.90	2962.50
J Markham	Legal Assistant	260.00	2.90	754.00
	TOTALS		10.80	3716.50

Disbursements

Total Disbursements	\$.00
Total This Invoice	\$3,716.50
Previous Balance	\$3,753.00

Kelly Hart & Hallman LLP

Faulk Company, Inc.
Matter # 19161.0100
2019 ACA ESRP Excise Tax Matter

Jan 28, 2025
Invoice #693315
Page 2

TOTAL AMOUNT DUE

\$7,469.50

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

March 28, 2025
 Invoice #697647

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through February 28, 2025

02/04/25	J. Markham	Analyzing Court's order for conference on motion for summary judgment proposal and objections in response to same.	.20	\$57.00
02/05/25	T. Winn	Conference call [REDACTED]	.70	\$297.50
02/07/25	T. Winn	Telephone conference [REDACTED]	.80	\$340.00
02/11/25	T. Winn	Preparing joint report for motion briefing schedule.	1.30	\$552.50
	Total		3.00	\$1,247.00

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
T Winn	Associate	425.00	2.80	1190.00
J Markham	Legal Assistant	285.00	.20	57.00
TOTALS			3.00	1247.00

Disbursements

Total Disbursements	\$.00
Total This Invoice	\$1,247.00
TOTAL AMOUNT DUE	\$1,247.00

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

April 22, 2025
 Invoice #700098

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through March 31, 2025

03/07/25	T. Winn	Preparing and filing supplemental briefing for motion for summary judgment.	4.20	\$1,785.00
03/07/25	J. Markham	Preparing Appendix in Support of Motion for Summary Judgment.	.50	\$142.50
03/07/25	J. Markham	Preparing Plaintiff's motion for summary judgment for filing.	.50	\$142.50
03/14/25	T. Winn	Preparing motion to excuse parties from mediation requirement.	1.60	\$680.00
	Total		6.80	\$2,750.00

-----TIME AND FEE SUMMARY-----				
-----TIMEKEEPER-----		RATE	HOURS	FEES
T Winn	Associate	425.00	5.80	2465.00
J Markham	Legal Assistant	285.00	1.00	285.00
TOTALS			6.80	2750.00

Disbursements

Total Disbursements	\$.00
Total This Invoice	\$2,750.00
Previous Balance	\$1,247.00
TOTAL AMOUNT DUE	\$3,997.00

Kelly Hart & Hallman LLP
 201 Main, Suite 2500
 Fort Worth, TX 76102
 (817) 332-2500
 Taxpayer ID# [REDACTED]

Faulk Company, Inc.
 Attn: Dawson Oswalt
 PO Box 100533
 Fort Worth, TX 76185

May 6, 2025
 [REDACTED]

Client # 19161
 Matter # 19161.0100
 2019 ACA ESRP Excise Tax Matter

Legal services rendered through April 30, 2025

04/24/25	T. Winn	Preparing motion to amend or alter judgment.	1.40	\$595.00
04/24/25	J. Markham	Preparing Motion for Award of Attorneys Fees and Brief in Support.	1.50	\$427.50
04/30/25	T. Winn	Preparing motion for attorney's fees.	.20	\$85.00
04/30/25	J. Markham	Preparing Declaration in support of Motion for Attorneys' Fees.	.50	\$142.50
		Total	3.60	\$1,250.00

-----TIME AND FEE SUMMARY-----

-----TIMEKEEPER-----	RATE	HOURS	FEES
T Winn Associate	425.00	1.60	680.00
J Markham Legal Assistant	285.00	2.00	570.00
TOTALS		3.60	1250.00

Disbursements

Total Disbursements	\$.00
Total This Invoice	\$1,250.00
Previous Balance	\$2,750.00
TOTAL AMOUNT DUE	\$4,000.00